



NATIONAL ASSOCIATION
OF THEATRE OWNERS

June 17, 2008

Mr. Brendan Murray
Media Bureau
Federal Communications Commission
Room 4-A737
445 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Extension of Time to File Comments in MB Docket No. 08-82,
CSR-7947-Z

Dear Mr. Murray:

The National Association of Theatre Owners (“NATO”) respectfully requests that the Federal Communications Commission, Media Bureau (“The Bureau”), extend the time for filing comments in MB Docket No. 08-82, CSR-7947-Z—a Petition from the Motion Picture Association of America (“MPAA”) for Waiver of the Prohibition on the Use of Selectable Output Controls (47 C.F.R. § 76.1903)—from twenty (20) days, as specified in the Bureau’s public notice of June 5, 2008, to forty-five (45) days.

NATO believes that the “new business model” described in the MPAA’s petition *could* have a devastating effect on the member companies we represent as well as consumers of motion pictures. While NATO and its member companies generally support their studio partners on measures designed to protect intellectual property, it is not yet clear to us whether the underlying business model driving this IP-protection effort is in the public interest.

Nor is it yet clear that the effort imperils the public interest. The matter is more complex than its context might suggest. The American cinema industry certainly does not appear to have been in the Commission’s contemplation

when crafting either the underlying rule or the standards and procedures for obtaining a waiver—yet a precipitously granted waiver *might* (we do not yet know) trigger the destruction of neighborhood movie theaters across the country. A little extra time appropriately redresses this unanticipated complexity.¹

Our members wish to discuss the proposed model, and the implications of the petition, with the member companies of the MPAA before filing any comments for the record in this proceeding. We hope that healthy, inter-industry dialogue might lead to better understanding of the new business model, which would in turn enable interested parties to provide the Commission with more informative comments—and perhaps assist the Commission in ensuring that its action, if any, appropriately and intelligently accounts for the wider public interest in the consumption of motion pictures.

Moreover, we believe that it might be possible—again we simply cannot yet know—to carve out more common ground than the petition by itself, with its alarming threat of collapsed distribution windows, suggests. If further dialogue clarifies the business model, then NATO, and by extension the Commission, will benefit from either more precise comments in opposition, or less opposition altogether.

With the goal of better dialogue and understanding, NATO contacted the MPAA asking that it consent to this request for additional time. Unfortunately, the MPAA refused, and stated that its previous request for expedited consideration made it impossible for it to consent to any more time for comments.

We find this assertion of need for expedited action rather remarkable. What is the urgent need that prohibits twenty-five additional days of industry education? In its petition the MPAA maintains that “expedited consideration of this waiver request is necessary in order for the Petitioners to move forward with their independent discussions with MVPDs regarding introduction of the Services.” It is unclear how 20 days, rather than 45 days,

¹ NATO understands that the MPAA’s petition seeks a waiver of conduct prohibited under Section 76.1903 (“Interfaces”) of Subpart W (“Encoding Rules”). We also understand that the petition is submitted under the general waiver petition provisions in 47 C.F.R. § 76.7, which require only a twenty-day comment period. We do not mean to suggest, therefore, that the Bureau’s proposed comment schedule violates the Commission’s rules. We raise the request for more time as a matter of equity, given the very significant and potentially damaging implications of the business model that underlies the petition, and which serves as asserted justification for the petition. We note by comparison that the specific waiver petition rules of Subpart W require comment periods of at least thirty days, in recognition of the complexity and importance of the issues addressed by Subpart W. (*See, e.g.*, 47 C.F.R. § 76.1905.)

materially facilitates “independent discussions” that could have been (and presumably have been) proceeding for two and a half years.

At least one of the MPAA members has been contemplating this “new business model” for a long time. News Corp. President Peter Chernin stated publicly his plan for an early release window of movies in high definition to the home on January 6, 2006. (*Variety*, “Fox Smudges Old Windows; Studio Shakes Up Delivery Skeds,” by Paul Sweeting, posted January 8, 2006.) The MPAA then waited for more than two years to petition the FCC to waive its restrictions on the use of SOC. The argument for such swiftness appears abandoned long ago.

It is also clear that the MPAA has long understood the implications of the SOC restrictions and the nature of the Commission’s governing rules. The MPAA was very active in the 2003 and 2004 rulemaking processes that established the regulatory framework involved. Simply put, the MPAA has known about the governing rules for nearly five years, and has known of its members’ interest in a business model that requires exception from those rules for over two years, and yet now believes it essential that the FCC act upon the shortest comment period possible.

The cinema company members of NATO simply seek a little more time to talk this through with our industry partners.

Accordingly, we hereby request that the Bureau extend the deadline for the filing of comments in the above referenced matter from June 25, 2008, to July 21, 2008.

NATO is the largest trade association in the world for the owners and operators of motion picture theaters, representing over 600 companies that operate more than 30,000 movie screens in all fifty states, and additional cinemas in more than fifty countries worldwide.

Respectfully submitted,

NATIONAL ASSOCIATION OF THEATRE OWNERS, INC.

By:



G. Kendrick Macdowell
Vice President, General Counsel &
Director of Government Affairs
National Association of Theatre Owners, Inc.
750 First Street, N.E., Suite 1130
Washington, D.C. 20002
202-962-0054

Cc: Michael P. O'Leary
Motion Picture Association of America, Inc.
1600 Eye Street, N.W.
Washington, D.C. 20006